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Better Luck Next Time Congress: The Supreme Court Interprets 1367 Supplemental Jurisdiction in Exxon Mobil Corp. v. Allapattah Services, Inc.

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BETTER LUCK NEXT TIME, CONGRESS: THE SUPREME COURT INTERPRETS § 1367 SUPPLEMENTAL JURISDICTION IN *EXXON MOBIL CORP. V. ALLAPATTAH SERVICES, INC.*[1]

Joseph Escandón[2]

A nine-year-old girl injured by a can of tuna sued the manufacturer in a diversity suit, joined by family members as co-plaintiffs.[3] The United States Court of Appeals for the First Circuit held that only the injured girl alleged damages sufficient to meet the amount-in-controversy requirement of the statute granting diversity jurisdiction.[4] Interpreting 28 U.S.C. § 1367, the court of appeals concluded that it could not exercise supplemental jurisdiction over the claims of the family members who did not independently meet the amount in controversy.[5]

In a case consolidated for appeal, 10,000 gasoline dealers alleged pricing overcharges in a diversity class action against an oil company.[6] Though a named class representative alleged damages meeting the amount-in-controversy requirement, other class members did not.[7] Also interpreting 28 U.S.C. § 1367, the Eleventh Circuit concluded that it could exercise supplemental jurisdiction over the claims of plaintiff class members who did not allege the necessary amount in controversy.[8] Recognizing the inconsistency of the approaches, the Supreme Court of the United States granted certiorari to resolve the circuit split.[9] It held that 28 U.S.C. § 1367 authorizes supplemental jurisdiction over the claims of plaintiffs who do not satisfy the amount-in-controversy requirement where at least one plaintiff does and all other elements of jurisdiction are satisfied.[10]

Federal courts exercise jurisdiction that is granted generally by the Constitution, and specifically by an express congressional grant of that jurisdiction.[11] For example, district courts have original jurisdiction over civil actions between citizens of different states where there is a sufficient

1. Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 125 S. Ct. 2611 (2005). As this issue goes to press, the pagination of Volume 545 of United States Reports is unknown, so citations for this case will be to Supreme Court Reporter.

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3. *Exxon Mobil Corp.*, 125 S. Ct. at 2616.
4. *Id.*
5. *Id.*
6. *Id.* at 2615.
7. *See id.* at 2615–16.
8. *Id.* at 2616.
9. Exxon Corp. v. Allapattah Services, Inc., 543 U.S. 924 (2004).
10. *Exxon Mobil*, 125 S. Ct. 2611.
11. *See, e.g.*, Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

amount in controversy.[12] Historically, courts have developed and enforced a layer of interpretation of these statutory requirements.[13] Thus, in *Clark v. Paul Gray, Inc.*, the Supreme Court dismissed as outside of the court's jurisdiction all claims save that of the lone plaintiff who alleged the statutory amount in controversy.[14] The Supreme Court applied the same "firmly rooted . . . accepted construction" of the amount-in-controversy requirement in *Zahn v. International Paper Co.*, dismissing a diversity class action for lack of original jurisdiction because, though the named plaintiffs alleged the amount in controversy, not all class members could do so.[15]

Courts have also developed doctrines justifying extension of jurisdiction to claims outside an express statutory grant of jurisdiction, but related to claims within one, on the ground of judicial economy.[16] In *United Mine Workers v. Gibbs*, for example, the Supreme Court held that a plaintiff's state-law claims, arising out of the "common nucleus of operative fact" that gave rise to plaintiff's federal question claims against the same defendant, were within the district court's jurisdiction.[17] The Court reasoned that the power to exercise this pendent jurisdiction over claims that otherwise could not be heard in a federal forum was implicit in the constitutional grant of jurisdiction to the judiciary.[18]

In a line of cases following *Gibbs*, the Supreme Court distinguished between non-federal pendent claims between two parties already properly within the jurisdiction of the district court, as in *Gibbs*, and cases involving pendent parties in which a plaintiff asserted non-federal claims arising from the same facts against different defendants.[19] Several of these cases cited *Zahn* as an example of the insufficiency of a mere common nucleus of fact

12. 28 U.S.C. § 1332(a) (2000) (granting the authority permitted under U.S. CONST. art. III, § 2, cl. 1).

13. *See, e.g.*, Troy Bank v. G.A. Whitehead & Co., 222 U.S. 39 (1911) (requiring each plaintiff to allege requisite amount in controversy); Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806) (requiring complete diversity between opposing parties).

14. Clark v. Paul Gray, Inc., 306 U.S. 583, 590 (1939). *Clark* was a case grounded on federal question jurisdiction, which at that time had an amount-in-controversy requirement. *Id.* at 588.

15. Zahn v. International Paper Co., 414 U.S. 291, 294–95, 294–301 (1973). *Zahn* drew primarily upon the authority of *Clark*, as well as *Snyder v. Harris*, 414 U.S. 291 (1969), a class action in which no single plaintiff alleged the amount in controversy required by the statute and which also relied on *Clark*. *See Zahn*, 414 U.S. at 295–301.

16. *See generally* 13 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE & PROCEDURE § 3523 (2d ed. 1987) (discussing doctrine of ancillary jurisdiction); 13B *id.* §§ 3567–67.2 (discussing doctrine of pendent jurisdiction). The Supreme Court has noted that pendent and ancillary jurisdiction are "two species of the same generic problem." Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 370 (1978).

17. United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966).

18. *See id.*

19. *See* Finley v. United States, 490 U.S. 545 (1989) (finding no pendent jurisdiction over state-law claims against defendants arising out of airplane crash when federal courts have exclusive jurisdiction over plaintiff's claims under Federal Tort Claims Act and pendent parties are nondiverse); *Kroger*, 437 U.S. 365 (finding no pendent jurisdiction over claims asserted against third-party defendant when no diversity existed between plaintiff and pendent party); Aldinger v. Howard, 427 U.S. 1 (1976) (finding no pendent jurisdiction over plaintiff's state-law claims against county when county was excepted from suit under civil rights statute).

giving rise to both jurisdictionally sufficient and deficient claims in justifying jurisdiction over additional parties not otherwise subject to federal jurisdiction, without express statutory approval.[20] The last case in this line, *Finley v. United States*, noted that Congress was free to create a statutory basis to permit district courts to exercise pendent-party jurisdiction.[21]

Congress, dissatisfied with the outcome in *Finley*, complied.[22] Categorizing both pendent and ancillary jurisdiction under a new name, Congress enacted the supplemental jurisdiction statute.[23] Subsection (a) of § 1367 grants jurisdiction over related claims whenever the district courts have original jurisdiction over a civil action, and the second sentence of subsection (a) explicitly permits such exercise over additional parties.[24] Subsection (b) retracts that supplemental jurisdiction from certain classes of parties claiming diversity as the basis of the district court's original jurisdiction.[25] Though all authorities agree that § 1367 successfully overruled *Finley*,[26] the question of the continued viability of *Clark* and *Zahn* has not produced a similar consensus.[27]

The legislative history of § 1367 itself manifests some confusion over whether the statute overruled *Clark* and *Zahn*. The subcommittee that considered supplemental jurisdiction and the impact of *Finley* drafted a statute very similar to that eventually enacted by Congress, and contended that its proposal would overrule *Zahn*.[28] However, the House of Representatives appeared to take the stance that its version of the statute would

20. *See Kroger*, 437 U.S. at 372. *See also Finley*, 490 U.S. at 549–50 (citing *Zahn* as analytically distinct from *Gibbs*, and noting that *Zahn* did not mention *Gibbs*). In fact, *Zahn* neither mentioned *Gibbs* nor addressed the possible application of pendent or ancillary jurisdiction to the deficient plaintiff's claims, 414 U.S. at 291–302, though the dissent urged an application of ancillary jurisdiction. *Id.* at 305–09 (Brennan, J., dissenting).

21. *Finley*, 490 U.S. at 556.

22. *See* H.R. REP. NO. 101-734, at 27–28, *reprinted in* 1990 U.S.C.C.A.N. 6860, 6873–74.

23. Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089, 5113–14 (1990) (codified at 28 U.S.C. § 1367 (2000)). Section 1367 provides in part:

> (a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.
>
> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

24. 28 U.S.C. § 1367(a).

25. 28 U.S.C. § 1367(b).

26. *See, e.g.*, Ortega v. Star-Kist Foods, Inc., 370 F.3d 124, 134 (1st Cir. 2004).

27. *See, e.g., id.* at 132–33 (summarizing circuit split).

28. REPORT TO THE FEDERAL COURTS STUDY COMMITTEE OF THE SUBCOMMITTEE ON THE ROLE OF THE FEDERAL COURTS AND THEIR RELATION TO THE STATES 567–68, 561 n.3 (Mar. 12, 1990), *reprinted in* FEDERAL COURTS STUDY COMMITTEE WORKING PAPERS AND SUBCOMMITTEE REPORTS (July 1, 1990). In a brief statement in its report, the Federal Courts Study Committee recommended that Congress create supplemental jurisdiction but did not comment on the impact of that enactment on

preserve *Zahn*.[29] In addition, participants in the drafting of the statute apparently acknowledged the possible divergence between the intended effect on *Zahn* and the actual result accomplished by the text.[30]

The academic debates over whether § 1367 overruled *Clark* and *Zahn* have been lively.[31] Proponents typically fall into two camps. Some argue that the statute plainly overrules them and that an appeal to legislative history is unnecessary and unhelpful.[32] Those arguing that § 1367 leaves them intact typically point to the legislative history as indicative of how the statute should be applied regardless of the text,[33] or that the text of the statute itself can support an interpretation that preserves *Zahn*.[34]

The debate over the viability of *Zahn* in light of § 1367 has been equally boisterous in the courts.[35] Appellate courts reading the statute as permitting exercise of supplemental jurisdiction over the claims of plaintiffs who fail to allege the requisite amount in controversy have done so uniformly on the basis of the plain, unambiguous meaning of the text of the statute.[36] On the other hand, appellate courts reading the statute as preserving *Clark* and *Zahn*, while not uniformly reading the statute as ambiguous, have nonetheless placed greater emphasis on legislative history.[37]

Zahn. FEDERAL COURTS STUDY COMMITTEE, REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 47–48 (Apr. 2, 1990) (noting that the report of the subcommittee "contains additional material on this subject").

29. *See* H.R. REP. No. 101-734, at 29, *reprinted in* 1990 U.S.C.C.A.N. 6860, 6875 (stating "[subsection (b)] is not intended to affect the jurisdictional requirements of 28 U.S.C. § 1332 in diversity-only class actions, as those requirements were interpreted prior to Finley" and citing *Zahn* in a footnote).

30. Thomas D. Rowe, Jr. et al., *Compounding or Creating Confusion About Supplemental Jurisdiction? A Reply to Professor Freer*, 40 EMORY L.J. 943, 960 n.90 (1991). "It would have been better had the statute dealt explicitly with this problem, and the legislative history was an attempt to correct the oversight." *Id.*

31. *See* Richard D. Freer, *The Cauldron Boils: Supplemental Jurisdiction, Amount in Controversy, and Diversity of Citizenship Class Actions*, 53 EMORY L.J. 55, 56–58 (2004); James E. Pfander, *Supplemental Jurisdiction and Section 1367: The Case for a Sympathetic Textualism*, 148 U. PA. L. REV. 109, 110 n.3 (1999).

32. *See, e.g.*, Freer, *supra* note 31, at 66–86.

33. *See, e.g.*, Rowe, *supra* note 30, at 960 n.90.

34. *See, e.g.*, Pfander, *supra* note 31, at 127–53.

35. *See, e.g.*, Russ v. State Farm Mut. Auto. Ins. Co., 961 F. Supp. 808, 820 (E.D. Pa. 1997) (stating that finding the plain language of § 1367 to overrule *Clark* and *Zahn* is a "message from us in the judicial branch to [Congress] [saying] 'Gotcha! And better luck next time.'").

36. *See* Olden v. LaFarge Corp., 383 F.3d 495, 504 (6th Cir. 2004) (statute unambiguously overrules *Zahn*); Allapattah Servs., Inc. v. Exxon Corp., 333 F.3d 1248, 1254–56 (11th Cir. 2003) (same); Rosmer v. Pfizer, Inc., 263 F.3d 110, 117–119 (4th Cir. 2001) (same); Gibson v. Chrysler Corp., 261 F.3d 927, 934–940 (9th Cir. 2001) (same); *In re* Brand Name Prescription Drugs Antitrust Litig., 123 F.3d 599, 607 (7th Cir. 1997) (same); Stromberg Metal Works, Inc., v. Press Mech., Inc., 77 F.3d 928, 930–31 (7th Cir. 1996) (statute unambiguously overrules *Clark*); *In re* Abbott Labs., 51 F.3d 524, 528 (5th Cir. 1995), *aff'd by an equally divided court*, 529 U.S. 333 (2000) (statute unambiguously overrules *Zahn*). Some of these courts studied the legislative history and acknowledged that overruling *Zahn* may have been an unintentional mistake by Congress, but nonetheless refused to abandon the plain meaning of the statute. *See Gibson*, 261 F.3d at 938–40.

37. *See* Ortega v. Star-Kist Foods, Inc., 370 F.3d 124, 131–44 (1st Cir. 2004) (text of statute, plainly read and corroborated by legislative history, can be read to preserve *Clark*); Trimble v. Asarco, Inc., 232 F.3d 946, 959–62 (8th Cir. 2000) (ambiguities in statute warrant consideration of legislative history that justifies preservation of *Zahn*); Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 218–22 (3rd Cir. 1999) (ambiguity in statute warrants resort to legislative history and preservation of *Clark* and *Zahn*); Leonhardt v. W. Sugar Co., 160 F.3d 631, 640–41 (10th Cir. 1998) (purporting to read

A few resources are available as ammunition for any attempted interpretation of § 1367. First, the statute governing federal jurisdiction over removed cases contains threshold language similar to that found in § 1367(a).[38] In *City of Chicago v. International College of Surgeons*, the Supreme Court held that a subset of federal-question claims was sufficient to put the civil action within the original jurisdiction of the district courts, allowing supplemental jurisdiction to attach to related state-law claims against the same defendant.[39] Thus, in at least one context, the Court has found "original jurisdiction of the district courts" to be present when some but not all claims satisfy a statute granting jurisdiction.[40]

Also relevant are various canons of statutory interpretation. Proponents of either interpretation can assert precedent in favor of their respective interpretations; those arguing the unambiguous overruling of *Clark* and *Zahn* can point to the "preeminent canon" that "inquiry begins with the statutory text, and ends there as well if the text is unambiguous."[41] Those arguing for an interpretation incorporating the *Clark* and *Zahn* rule can point to the assumption that Congress "legislate[s] against [a] background of law, scholarship, and history."[42]

In the noted case, the Supreme Court of the United States read the text of 28 U.S.C. § 1367 in light of its structure and context as unambiguously overruling *Zahn* and *Clark*, and saw no need to resort to legislative history.[43] The Court narrowly framed the question in terms of whether a court has the original jurisdiction required by § 1367 for exercise of supplemental jurisdiction over related claims in a diversity case where at least one plaintiff satisfies the amount in controversy, and concluded that a district court does have original jurisdiction over such an action.[44] The Court then discussed and dismissed several arguments that such actions fall outside the original jurisdiction of the district courts.[45] The Court also responded to an objection that its interpretation was inconsistent with the implications of § 1367(b).[46] Finally, after reaching its conclusion, the Court declared unnecessary any resort to legislative history, but conducted just such an examination as a cautionary exercise demonstrating the weaknesses of those resources.[47]

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§ 1367 as unambiguously preserving *Zahn*, but citing legislative history as supportive of that conclusion).

38. 28 U.S.C. § 1441(a) (stating "any civil action brought in a State court of which the district courts of the United States have original jurisdiction[ ] may be removed . . . .").

39. City of Chi. v. Int'l Coll. of Surgeons, 522 U.S. 156, 164–66 (1997).

40. *See id.*

41. BedRoc Ltd. v. United States, 541 U.S. 176, 183 (2004).

42. Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 169 (2004).

43. Exxon Mobil Corp. v. Allapattah Servs., Inc., 125 S. Ct. 2611, 2620–21, 2625 (2005).

44. *Id.* at 2620–21.

45. *See id.* at 2621–24.

46. *Id.* at 2625.

47. *See id.* at 2625–27.

After restating the law of supplemental jurisdiction and the *Clark* and *Zahn* interpretations of the amount-in-controversy requirement as they existed prior to the passage of § 1367, the Court examined the statutory requirements for any exercise of supplemental jurisdiction.[48] The Court concluded that a district court has original jurisdiction over a civil action consisting of the claim of the plaintiff who sufficiently alleges the amount in controversy, regardless of the sufficiency of that allegation by other plaintiffs.[49] The original jurisdiction over that plaintiff's claim satisfies the threshold condition of § 1367(a) and allows exercise of supplemental jurisdiction over related claims, including claims of plaintiffs failing to satisfy the amount in controversy.[50] The Court found further support for its interpretation in the structure of § 1367, noting that § 1367(b) removes supplemental jurisdiction from specific categories of parties in diversity suits, but that Rule 20 plaintiffs and Rule 23 plaintiff class members are not so enumerated.[51]

The Court then considered and rejected arguments challenging its interpretation that a district court has original jurisdiction over a diversity action when at least one but not every plaintiff alleges a sufficient amount in controversy.[52] First, the Court dismissed the theory that an entire civil action is outside a district court's original jurisdiction if a single claim is jurisdictionally deficient, reasoning that any deficient claims intended to be encompassed by § 1367(a) would defeat the statutory precondition and prevent supplemental jurisdiction from ever being exercised, overruling even *Gibbs*.[53]

Next, the Court rejected an argument that a single claim failing to allege the necessary amount in controversy "contaminates" the other sufficient claims in a civil action and defeats any original jurisdiction over the whole, observing that such an interpretation is not justified by policy in the amount-in-controversy context, because one plaintiff's failure to present a claim of sufficient gravity does not diminish the significance of the claim of the plaintiff who does.[54] Finally, the Court noted that either argument fails

48. *See id.* at 2616–20. In its discussion of the history of pendent jurisdiction, the Court noted a difference between analysis of complete diversity as required by *Strawbridge v. Curtiss*, in which the presence of any nondiverse parties on opposing sides will defeat original jurisdiction over the entire action, and analysis of other statutory requirements for federal jurisdiction, such as the amount in controversy or existence of a federal question, which the Court noted could be analyzed for sufficiency claim-by-claim, without reference to the remainder of the action. *See id.* at 2617–18.

49. *Id.* at 2620–21.

50. *Id.* The Court asserted this conclusion as an obvious and inevitable logical consequence of the statutory language, and cited no authority for its interpretation. *See id.*

51. *Id.* at 2621.

52. *Id.* at 2621–24.

53. *See id.* at 2621–22. The Court emphasized the inconsistency of this argument with accepted legal practice as well, noting that courts routinely fix jurisdictional defects by dismissing individual parties rather than entire actions. *Id.* at 2622 (citing Clark v. Paul Gray, Inc., 306 U.S. 583, 590 (1938)). The Court also declined to limit this "indivisibility theory" to diversity jurisdiction and not federal-question jurisdiction, finding no textual basis in § 1331 and § 1332 for the distinction. *Id.* at 2622.

54. *Id.* Thus, the claim of the plaintiff who successfully alleged the amount in controversy would still validly be within the original jurisdiction of the district court, and supplemental jurisdiction could

to address the similar reading of "original jurisdiction" in federal removal jurisdiction, where comparable statutory language in 28 U.S.C. § 1441(a) is satisfied by a civil action in which only a subset of claims satisfy federal jurisdictional requirements.[55]

The Court also responded to the charge that its interpretation produces an "anomaly" in the jurisdictional retractions in § 1367(b).[56] The Court acknowledged the peculiarity of the exclusion of supplemental jurisdiction over plaintiffs proposed to be joined under Rule 19, in light of the Court's holding that supplemental jurisdiction can be exercised over permissively joined plaintiffs under Rule 20.[57] However, the Court reversed the argument and observed that if the district courts had no original jurisdiction in a diversity case where a single plaintiff's claims did not satisfy the amount-in-controversy requirement, then any mention of Rule 19 plaintiffs who did not meet those requirements would be superfluous.[58] Having thus confronted and answered every objection to its interpretation of the statute, the Court reiterated its initial statement of the issue and held that the plain reading of § 1367 overrules the rule stated in *Clark* and *Zahn*.[59]

As an aside, the Court also responded to the argument that § 1367 is ambiguous and requires interpretation in light of its legislative history.[60] The Court denied the existence of any ambiguity in the statute, but nonetheless discussed the legislative history to demonstrate the dangers inherent in applying it to an interpretation of § 1367.[61] First, the Court noted the dubious value of the "murky" legislative history, pointing to conflicts between statements in the drafting subcommittee report and the House Committee Report regarding the fate of *Zahn* under the statute.[62] Next, the Court cited the statements of some of the statute's drafters as dangerous post-hoc attempts to alter the meaning of the statute's text in an end

attach to other claims. *See id.* On the other hand, the Court found the "contamination theory" germane to the complete-diversity determination, because the presence of nondiverse opposing parties alleviates the worry of potential bias in a state forum and removes the need to hear every claim in the federal forum. *See id.* Thus, under the Court's interpretation, § 1367 does not allow supplemental jurisdiction to bypass the complete-diversity requirement. *See id.* The Court found no authority in the fact that the diversity and the amount-in-controversy requirements are grounded in § 1332 for applying the contamination theory to both. *Id.* at 2622.

55. *Id.* at 2622–23 (citing City of Chi. v. Int'l Coll. of Surgeons, 522 U.S. 156 (1997) (allowing removal on the basis of federal-question jurisdiction over some claims in the civil action and exercise of supplemental jurisdiction over related state-law claims)).

56. *Id.* at 2624.

57. *See id.* (noting the possibility of an "unintentional drafting gap") (citing Meritcare Inc. v. St. Paul Mercury Ins. Corp., 166 F.3d 214, 221 n.6 (3rd Cir. 1999)).

58. *Id.* ("Though the omission of Rule 20 plaintiffs from § 1367(b) presents something of a puzzle on our view of the statute, the inclusion of Rule 19 plaintiffs in this section is at least as difficult to explain under the alternative view.").

59. *Id.* at 2625.

60. *Id.*

61. *Id.* at 2625–27.

62. *Id.* (contrasting REPORT TO THE FEDERAL COURTS STUDY COMMITTEE OF THE SUBCOMMITTEE ON THE ROLE OF THE FEDERAL COURTS AND THEIR RELATION TO THE STATES 561 n.33 (Mar. 12, 1990), reprinted in FEDERAL COURTS STUDY COMMITTEE WORKING PAPERS AND SUBCOMMITTEE REPORTS (July 1, 1990), with H.R. REP. NO. 101-734, at 27, reprinted in 1990 U.S.C.C.A.N. 6860, 6875).

run around the legislative process.[63] The Court concluded by stating that even if resort to the legislative history were warranted, it provided no basis for altering the Court's interpretation of the plain meaning of the statute.[64]

The noted case provoked two dissents.[65] Justice Stevens attempted to rehabilitate the legislative history, recasting the majority's criticisms of the murkiness and suspiciousness of the available resources as evidence of the ambiguity of § 1367.[66] Though he offered no alternative interpretation, Justice Stevens did assert that his account of the legislative history supported Justice Ginsburg's alternative interpretation.[67]

The alternative interpretation offered by Justice Ginsburg preserved the rule of *Clark* and *Zahn*.[68] Drawing heavily on the First Circuit's reasoning in *Ortega v. Star-Kist Foods, Inc.*,[69] the dissent argued for a narrower interpretation of the § 1367(a) original jurisdiction threshold that incorporates the interpretations of the § 1332 requirements as they existed when the statute was enacted.[70] Justice Ginsburg emphasized the conservatism of her approach, when compared with the majority's, in preserving those traditional interpretations, and also argued that her reading would more closely align with the removal statute.[71]

The noted case might come to stand for the proposition that bad statutes make for bad case law. As Justice Ginsburg was willing to grant, both the majority and dissent offer plausible readings of the statutory text,[72] but neither approach is wholly satisfactory in coping with a statute generally agreed to have been poorly drafted.[73] The Court's "contamination" theory prevents its account of § 1367 from abolishing the rule of complete diversity, but the Court offers no completely satisfactory basis for rejecting the application of that theory to the *Clark* and *Zahn* requirements for independent fulfillment of the amount in controversy.[74] The dissent, on the other hand, requires reading into a statute labeled "supplemental jurisdiction"

63. *Id.* at 2627 (referring to Rowe, *supra* note 30, at 960 n.90).

64. *Id.* The Court also briefly raised the enactment of the Class Action Fairness Act, Pub. L. No. 109-2, 119 Stat. 4 (2005), but attributed no weight to its passage, on the basis of its lack of retroactivity and the irrelevance of its recent enactment to the enactment of § 1367 fifteen years earlier. *Id.* at 2627–28.

65. *Id.* at 2628–31 (Stevens, J., dissenting); *id.* at 2631–41 (Ginsburg, J., dissenting).

66. *See id.* at 2628–30 (Stevens, J., dissenting).

67. *Id.* at 2628 (Stevens, J., dissenting).

68. *Id.* at 2637–38 (Ginsburg, J., dissenting).

69. Ortega v. Star-Kist Foods, Inc., 370 F.3d 124 (1st Cir. 2004).

70. *Exxon Mobil Corp.*, 125 S. Ct. at 2638 (Ginsburg, J., dissenting). Thus, *Strawbridge* and *Clark* would have to be satisfied before a district court could have original jurisdiction over a diversity action and before any supplemental jurisdiction could attach. *Id.*

71. *Id.* at 2638–39 (Ginsburg, J., dissenting).

72. *Id.* at 2637 (Ginsburg, J., dissenting).

73. *E.g.*, Freer, *supra* note 31, at 59–60.

74. *See Exxon Mobil Corp.*, 125 S. Ct. at 2622. The Court ignores the possibility that the amount-in-controversy requirement is intended to insure that the increase in judicial workload from the claims of additional plaintiffs ought to be justified only by a corresponding increase in the overall gravity of the suit, in which case the policy of the amount-in-controversy requirement would justify applying the "contamination" theory. In a sense, the Court assumes the opposite of the policy underlying the *Clark* rule, and therefore concludes that *Clark* must have been overruled. *See id.*

the entire convoluted history of ancillary and pendent jurisdiction,[75] an outcome that is at least awkward, if not masochistic. Furthermore, the dissent's appeal to the operation of § 1441 is no more convincing than that of the majority.[76]

If the preferability of either holding is mainly the product of one's particular stance on the value of legislative history, then both the Court and the dissent are preaching to the choir. From a strictly consequentialist perspective, however, the majority's interpretation of § 1367 seems less disruptive. The Court's interpretation of supplemental jurisdiction simplifies the application of the former doctrines of pendent and ancillary jurisdiction, which the dissent would rather preserve intact in all their arcane glory.[77] Furthermore, in light of the Class Action Fairness Act,[78] the Court's expansive reading of supplemental jurisdiction meshes well with contemporary lowering of barriers to complex litigation in federal forums. And finally, perhaps the majority's conviction that § 1367 is totally unambiguous will prompt Congress to choose its words more carefully the next time it dabbles in judicial jurisdiction.

75. *See id.* at 2638, 2638 n.10 (Ginsburg, J., dissenting).

76. *See id.* at 2369 (Ginsburg, J., dissenting). This refers to the requirements of § 1441, which imply that in order to maintain removal jurisdiction, the entire action at the time of removal could have been filed in federal court. This notion presupposes the interpretation of supplemental jurisdiction that it seeks to support.

77. *See id.* at 2368.

78. Pub. L. 109-2, 119 Stat. 4 (2005).